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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,776	02/22/2002	Denise Crites Tears	16,870B	1148
23556	7590	05/03/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			REICHLE, KARIN M	
401 NORTH LAKE STREET			ART UNIT	
NEENAH, WI 54956			PAPER NUMBER	
			3761	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/080,776

Applicant(s)

TEARS ET AL.

Examiner

Karin M. Reichle

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/15/04, 7/28/03, 7/24/03, 10/4/02
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

Drawings

1. The drawings were received on 4-3-02. These drawings are accepted by the Examiner.

Description

2. The abstract of the disclosure is objected to because the abstract is too long, i.e. more than 150 words in length, and legal terminology, i.e. "means", should be avoided. Correction is required. See MPEP § 608.01(b).

3. The use of the trademarks on pages 5-7 and 9 has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should be shown in all capital letters or with the trademark symbol but not both.

Claim Objections

4. Claims 1-8, 12-14 and 20 are objected to because of the following informalities:

Claim 1, line 20, claim 12, line 10 and claim 20, line 1 appear to be missing a word or words.

Appropriate correction is required.

Claim Language Interpretation

5. The claims set forth "attachment means". However such claim language invokes 35 USC 112, sixth paragraph, and thus is interpreted to cover the corresponding structure described in the specification, i.e. at the paragraph bridging pages 9-10, and equivalents thereof. Such language requires that the prior art element perform the identical function specified in the claim, i.e. attachment of the absorbent article to the primary undergarment.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unicharm Corp. EP '110.

See abstract, Figures, paragraphs 5, 14, 20, 27, 30-40, 49, 54, 59-60 and 64, i.e. the undergarment is 1, its cover is 2, its baffle is 3, its absorbent is 4 and the opening and crotch portion are disclosed at paragraphs 29 and 30, the article is 20, its cover is 21, its backing layer is

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22, its core is 23 and its attachment means is 26 or 45, and claims, especially claim 1, i.e. no elastics claimed, and claim 12, i.e. cover and liner with same liquid permeability. It is noted that paragraphs 31-32 and 60 disclose the absorbent article having an adhesive for attaching it to a primary absorbent undergarment. As discussed supra in the Claim Language Interpretation section, this is the same structure as disclosed at the paragraph bridging pages 9-10 of the instant application and such same structure performs the same function. Therefore, it is the Examiner's position that such is equivalent to the claimed "attachment means". Therefore the Unicharm reference teaches, explicitly or implicitly, a method of securing an absorbent article to a primary undergarment including the claimed structure of the article and garment, and the steps of forming the article, positioning the article on the legs of the wearer, placing the absorbent article over the crotch portion of the undergarment prior to the diaper being completely pulled up or fitted to the torso, using "attachment means" to secure the article and undergarment including removing a peel strip and putting, i.e. pressing, the "attachment means", and thereby article, against the crotch portion (It is noted that the terminology "firmly" is considered relative absent claiming of specific dimensions thereof), the flexible article acquiring a curved configuration and forming upstanding side walls which form reservoirs, positioning or pulling the undergarment up around the torso, i.e. completely pulling up or fitting the undergarment to the torso, such that the side walls are aligned against the wearer's groin, withdrawing the undergarment from the torso, removing the soiled absorbent article, replacing the soiled article with a new article, and securing two articles to the undergarment at the same time. The Unicharm reference however does not disclose any particular order of the steps of positioning the undergarment on the wearer and securing the article thereto, i.e. securement of the article before or after placement of the

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undergarment on the legs, and if after, the steps of claims 3-5, i.e. stretching the crotch portion or the placement or placement and securement of the article to the undergarment while the undergarment is at a particular position on the body other than not at a position where the undergarment is completely fitted to the torso. Yet also note page 11, lines 22-25, page 12, lines 6-31 and page 14, lines 19-33 of the instant application, i.e. it is disclosed that the garment is applied in a fashion similar to that of conventional underwear, there is no criticality disclosed with respect to any particular article attachment position of the undergarment with respect to the wearer's legs except the undergarment can not be completely pulled up or fitted to torso, there is no criticality disclosed with respect to the stretching out of the crotch portion by spreading legs apart as the user is raising or pulling up garment and it is disclosed that the absorbent article assumes a shape of the undergarment due to attachment to a similarly shaped undergarment. However, again, Unicharm does teach the desire to combine the article and undergarment prior to complete fitting of the undergarment to the torso and maintaining such combination completely fitted to the body to contain body fluids and teaches the steps of attaching and positioning of the article on the crotch portion. Additionally, the claimed order of steps, i.e. attachment before or after placement on the legs, and the steps of claims 3-5 are conventionally practiced, i.e. are well known, by wearers during securement of other well known absorbent articles such as, e.g., incontinence pads and sanitary pads, to other well known undergarments such as, e.g., cotton underwear, in order to form combination garments for containment of fluid. Furthermore, it would be obvious to one of ordinary skill in the art that the order of steps practiced by a user would depend on a variety of factors at the specific time of use. For example, one factor is where the securement is taking place, i.e. a wearer would be more likely to attach

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the article to the garment prior to the positioning of the garment on the body or replacing a used article in a garment which has been totally removed from the body when such attachment/replacement takes place in ones home since there is more room to move around in and at least a perception that such is a more hygienic environment than, for example, a public bathroom. Another factor would be the physical condition of the user, i.e. a user who is handicapped or less agile or dexterous would be more likely to attach or replace the article in the undergarment with a particular order of steps. It would also be obvious to one of ordinary skill in the art that spreading the crotch portion out whether by hand before or after placement of the undergarment on the body or by spreading ones legs while one is raising or pulling up the garment would all lessen the possibility or occurrence of there being wrinkles in such portion during attachment of the attachment means to the portion and thereby, the attachment of the attachment means to the portion would be better, i.e. the combination would be better combined. Therefore to employ the claimed steps for securing an absorbent article to an undergarment for securing the absorbent article as taught by Unicharm to the undergarment as taught by Unicharm, if not already so secured, would be obvious to one of ordinary skill in the art in view of the recognition that such steps are well known to provide a combination of an absorbent article and undergarment and the desire of Unicharm for such combination, especially in light of the lack of disclosure of criticality. The particular order of steps employed would be obvious to one of ordinary skill in the art dependent on factors present at the time of use such as location in which the wearer is at when such attachment takes place, i.e. home, away from home, the physical condition of the user, etc. It also would be obvious to one of ordinary skill in the art that spreading out of the crotch portion during attachment, e.g. by spreading the legs as the

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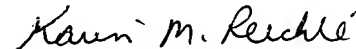
undergarment is being raised or pulled or any other manner, would better ensure the attachment of the article and garment in combination and the desire of Unicharm for such combination.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
April 23, 2005